The said Receiver in Bankruptcy became *functus officio* on Feb. 25, 1937, when said Hubert F. Laugharn was appointed and qualified as such Trustee in Bankruptcy. *Stanton v. Busch* CCA 9, 21 ABR, NS, 509, 59 F. (2) 668. Thereafter, and on May 17, 1937, the said Ernest R. Utley, Referee in Bankruptcy entered an order authorizing the said H. F. Metcalf, as Trustee in Bankruptcy, to employ said F. P. Newport at a salary of $250.00 per month as an assistant in the management and operation of the properties of the above named bankrupt and to pay to said F. P. Newport for such services the sum of $250.00 per month, said salary to be paid out of the assets of said estate, and to be charged as expenses of administration of said bankrupt estate, said salary to be payable as of Feb. 23, 1937, *and to continue so long as said F. P. Newport shall be employed by said trustee, or until* the further order of this Court.

Thereafter, pursuant to the said order, the said F. P. Newport performed such services and was paid said salary until Dec. 1, 1943, when the said H. F. Metcalf, as such trustee in bankruptcy notified him that his services would be no longer required from and after Dec. 1, 1943. Thereafter, no salary of any kind was paid to the said F. P. Newport, either by said H. F. Metcalf, Trustee in Bankruptcy, or the said Paul W. Sampsell as such Trustee in Bankruptcy. During said twelve year period, F. P. Newport made no effort to collect from the estate any salary of any kind for any services, although the record of the proceedings in this case shows that at all times during the twelve year period there was sufficient money available in the estate to pay such salary.

On July 21, 1955, the said F. P. Newport, the president and principal stockholder of the bankrupt corporation, filed

his claim for fees in which he requested the allowance of $31,750.00 as unpaid salary from Nov. 30, 1943, to May 3, 1954, at the rate of $250.00 per month, (upon the theory that the order made by Judge McCormick authorizing the receiver to employ Mr. Newport upon a salary of $250.00 per month has remained in full force and effect through the administration of the estate in spite of the termination of the receivership upon the appointment and qualification of a Trustee in Bankruptcy), plus $33,600.00 for alleged expenses, plus $175,350.00 for alleged extraordinary services, or a total of $208,950.00. He also requests compensation in an unnamed amount for other alleged services. The alleged expenses are not itemized. Bankruptcy Act, Sec. 62a.

Thereafter and on Aug. 2, 1955, the said Paul W. Sampsell, Trustee in Bankruptcy, filed objections to this claim of F. P. Newport. The said claim and the said objections thereto were heard before the undersigned Referee in Bankruptcy, before whom the administration of the bankrupt estate is now pending, on Sept. 19, 1955, and at the conclusion of the taking of evidence and the submission of the petition to him for decision, the Referee announced his oral decision that the said petition should be denied. He stated that, in his opinion, the order of Judge McCormick directing the Receiver in Bankruptcy to employ Mr. Newport ceased to be in force and effect upon the termination of the receivership and the appointment and qualificiation of a trustee in bankruptcy, and that, therefore, no more salary was due F. P. Newport than which has already been paid to him, and that it was significant that F. P. Newport had done nothing about this salary matter for a period of nearly twelve years.

The Referee further stated that the evidence showed that the alleged extraordinary services performed, and expenses incurred, by F. P. Newport were purely voluntary on his part, and without any court authorization, and, at most, a mere duplication of services performed by the Trustee in Bankruptcy and its counsel.

In making his decision, the Referee followed the rulings in the following cases: *In re Owl Drug*, DC, Nev., 31 ABR, NS, 763, 16 F. S. 139; *Cox v. Elliott*, CCA 8, 47 ABR, NS, 252, 132 F. (2) 851; *In re Siegel*, SD, N. Y. 41 ABR, 753, 252 F. 197; *In re Porto Rican American Tobacco*, CCA 2, 45 ABR, NS, 97, 117 F. (2) 599; *Goldie v. Cox*, CCA 8, 50 ABR, NS, 558, 130 F. (2) 691; *Crutcher v. Logan*, CCA 5, 39 ABR, NS, 12, 105 F. (2) 612; *Watters v. Hamilton Gas*, SD, W. Va., 42 ABR, NS, 721, 29 F. S. 436; *In re Virginia Oil & Refining*, CCA 5, 39 ABR, NS, 12, 102 F. (2) 613.

Thereafter, pursuant to Gen. Rule No. 7 of this Court, and on Nov. 9, 1955, the Trustee in Bankruptcy filed with the Referee proposed Findings of Fact, Conclusions of Law and Order Dismissing the said claim of F. P. Newport for fees. On Nov. 14, 1955, the said F. P. Newport filed his objections to the same with the Clerk of the Court, and not with the said Referee in Bankruptcy. Thereafter, pursuant to an order of the above entitled Court, such objections were sent by the Clerk of the Court to the said Referee in Bankruptcy on Dec. 1, 1955, and filed by the latter in his office as of that date.

On Nov. 15, 1955, the said Referee in Bankruptcy signed, filed and entered his Findings of Fact, Conclusions of Law and Order Dismissing the said claim of F. P. Newport for fees. Thereafter, and on Nov. 23, 1955, the said F. P. Newport filed with the Clerk of this Court,

and not with the said Referee in Bankruptcy, his Petition for Review of the said Findings of Fact, Conclusions of Law, Order and Judgment entered Nov. 15, 1955. In said Petition it is stated that the said Order denied fees to Morris Lavine, attorney for F. P. Newport and the bankrupt corporation. The said Morris Lavine has never applied to this court for the allowance to him of fees of any kind. This last named document was also sent by the Clerk of the Court to the said Referee in Bankruptcy on Dec. 1, 1955 by an order of the above entitled court, and the said Referee in Bankruptcy thereafter filed the same in his office as of the same date.

On Nov. 23, 1955, Morris Lavine, as attorney for F. P. Newport Corporation, Ltd., the bankrupt, and for F. P. Newport, filed with the Clerk of this Court, and not with the said Referee in Bankruptcy, a Petition for a Review of the said Findings of Fact, Conclusions of Law, Order and Judgment entered by the said Referee in Bankruptcy on Nov. 15, 1955. Thereafter, by an order of this court, the said document was sent by the said Clerk to the said Referee in Bankruptcy on Dec. 1, 1955, and filed by the latter in his office on that date.

The said Referee makes the following recommendations:

I.

The Petition of F. P. Newport for a Review be dismissed upon the following grounds:

(a) It was not filed with the Referee in Bankruptcy within ten days after the entry of the order sought to be reviewed, and not until six days thereafter. No extension of such ten day period was requested or granted by the Court. Bankruptcy Act Sec. 39c.

(b) The said Petition for Review does not set forth the alleged errors in respect to the order complained of. Bankruptcy Act Sec. 39c.

(c) The said Petition is without merit.

II.

The said Petition for Review of the said order complained of by Morris Lavine, as attorney-at-law for F. P. Newport Corporation, Ltd., the Bankrupt, and for F. P. Newport, be dismissed upon the following grounds:

(a) It was not filed with the Referee in Bankruptcy within ten days after the entry of the order sought to be reviewed, and not until six days thereafter. No extension of such ten day period was requested or granted by the Court. Bankruptcy Act Sec. 39c.

(b) An attorney-at-law, such as Morris Lavine, cannot sign and file a petition for review. *In re DuPont Young Mfg.* DC. Mass., 1 ABR, NS, 134, 290 F. 393; *In re International Match,* SD, N. Y. 23 ABR, NS, 681, 3 F. S. 443.

(c) The bankrupt corporation is not a person aggrieved by said order. It did not appear and was not a party to the proceedings before the Referee. *In re Rose,* CCA 9, 32 ABR, NS, 404, 86 F. (2) 69. It does not have any direct substantial interest in the Newport petition. *Forsher v. Graham,* CCA 6, 14 ABR, NS, 29, 32 F. (2) 654; *In re Henry Wood Sons,* DC, Mass., 48 ABR, 124, 279 F. 608.

(d) The said Petition is without merit.

The condition of the bankrupt estate, as disclosed by the Fifth Annual Report and Account of Paul W. Sampsell, Trustee, filed Nov. 8, 1955, shows a balance of cash on hand of $343,030.89. Out of this amount there was later allowed to Bailie, Turner, Lake and Sprague, as at-

torneys for Paul W. Sampsell, Trustee, the sum of $2,555.00 on account; to Ralph G. Ritchie, as tax consultant, the sum of $1,140.00; to H. A. Singeltary, as reporter, $15.00; and to the Referee's expense fund, $19.10, making a total of $3,729.10, leaving a net balance of $339,301.79. The total amount of the general allowed claims is $187,906.84, upon which there has been paid a first dividend of 25% amounting to $45,554.19. F. P. Newport filed objections to the payment of this dividend, but later withdrew them. A second dividend of 15% on such general claims was ordered by said Referee on Nov. 29, 1955, although F. P. Newport filed objections to the payment of any further dividends, at least until final determination of his petition for fees. There are pending, undetermined, asserted expenses of administration for Federal taxes in the sum of approximately $130,000 and of California State franchise taxes in the sum of approximately $12,000.00, and the sum of $42,450.00 applied for as compensation by Bailie, Turner, Lake and Sprague, as attorneys for Paul W. Sampsell, Trustee.

In contrast to the $175,350.00 requested by F. P. Newport as compensation for alleged extraordinary services rendered for the benefit of the bankrupt estate, the most that can be paid to the two Trustees in Bankruptcy for their periods of service of about 18 years, cannot exceed $60,877.18 even at the double commission rate provided for by Sec. 48a(3) of the Bankruptcy Act.

So that the Judge may have available, in the event he decides to hear the reviews on their merits instead of dismissing them, accompanying this certificate are all the documents involved in the hearing, including all exhibits,

and besides, the Reporter's Transcript of the hearing, listed as follows:

1. Claim (referred to in the Petitions for Review as "Petition") of F. P. Newport for Fees, and Points and Authorities in Support Thereof, filed July 21, 1955.

2. Objections of Trustee to claim of F. P. Newport for fees, filed Aug. 2, 1955.

3. Findings of Fact, Conclusions of Law and Order Dismissing Claim of F. P. Newport for Fees, filed Nov. 15, 1955;

4. Objections of F. P. Newport to Findings of Fact, Conclusions of Law and Order Dismissing Claim of F. P. Newport for Fees, filed Dec. 1, 1955.

5. Petition of Morris Lavine, as attorney for F. P. Newport and F. P. Newport Corporation, Ltd., for Review of Referee's Findings of Fact, Conclusions of Law, Order and Judgment, filed Dec. 1, 1955.

6. F. P. Newport's Petition for Review of Referee's Findings of Fact, Conclusions of Law, Order and Judgment, filed Dec. 1, 1955.

7. Reporter's Transcript of Proceedings before the Referee on Sept. 19, 1955, filed Sept. 26, 1955.

Dated: December 6, 1955.

REUBEN G. HUNT,
Referee in Bankruptcy.

United States District Court, Southern District of California, Central Division.

Memorandum Opinion on Review.

Filed Dec. 23, 1955.

In the Matter of F. P. Newport Corporation, Ltd., a corporation, Petitioner. No. 25308-Bkcy.

APPEARANCES: For the Petitioner: Morris Lavine, Esq., Los Angeles. For the Trustee: Bailie, Turner, Lake & Sprague, By Norman Bailie, Esq., Los Angeles, California. For the Bank of America: Edmund Nelson, Esq., Los Angeles, California.

YANKWICH, Chief Judge:

The involved history of this bankruptcy was given in a prior opinion, In Re F. P. Newport, D. C. Cal., 1954, 134 F. Supp. 95. Before me is petition to review an Order of the Referee denying the petition of F. P. Newport, a controlling stockholder of the bankrupt, for fees under claimed contract and for extraordinary services.

The provisions for reviewing the orders of a Referee by petition must be complied with. (Bankruptcy Act, §39(c); 11 U. S. C. A. §67(c); In Re Finkelstein, D. C. Pa., 1925, 3 F. 2d 1006; California State Board of Equalization v. Sampsell, 9 Cir., 1952, 196 F. 2d 252). The petition for review is signed by Newport's attorney. However, its text indicates that it is taken on behalf of Newport, the "person aggrieved." (Bankruptcy Act, §39(c), 11 U. S. C. A., §67(c)). So we consider the petition as though signed by the "aggrieved party,"[1] More, an administra-

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[1]In Re DuPont Young Mfg. Co., D. C. Mass., 1923, 290 F. 393, which the Referee cites in his certificate, the petition signed by the attorneys did "not disclose on whose behalf they acted." (p. 394) Here the petition *does* disclose that the attorney acted for Newport.

trative matter relating to fees may be reviewed even in the absence of a formal petition. (See Goodman v. Street, 1933, 9 Cir., 65 F. 2d 686).

The petition was filed with the Clerk of the Court on November 23, 1955, or within *ten days* after the Order. It was timely. The filing with the Clerk was a filing with the Referee. (Bankruptcy Act, §51(4); 11 U. S. C. A., §79(4); General Order 20; In Re Sadler, D. C. Cal., 1952, 104 F. Supp. 886, 889). More, this Court has the right to entertain a review filed out of time. (Bankruptcy Act. §39(c); 11 U. S. C. A., §67(c); Pfister v. Northern Illinois Finance Corp., 1942, 317 U. S. 144; In re C & P Co., D. C. Cal., 1945, 63 F. S. 400, 403-404; Oppenheimer v. Oldham, 5 Cir., 1949, 178 F. 2d 386, 390).

By the same token there is no merit to the contention of the petitioner that he was entitled to a hearing upon his objections to the Referee's findings. Our Local Rule 7 which applies to findings of Referees as well as to findings of the Court specifically provides:

> "If objections are filed within the time limited herein, the judge may thereafter require the attorneys interested to appear before him or he *may sign* the document as prepared or as modified by him."

This provision has never been interpreted as making a hearing *obligatory* whenever objections to findings are filed. Indeed, such hearings are a rarity. The Court either signs the findings as proposed or modifiies them if the objections are valid, without a hearing. However, on review, the objections may be considered in order to determine the sufficiency of the findings. So considered, we find the objections made here to be without merit. The findings of the Referee here under attack are amply jus-

tified under the law and the facts in the voluminous record with which we have had occasion to familiarize ourselves in the prior and present review.

The findings of a Referee are to be accepted unless they are clearly erroneous. (Rule 52(a), Federal Rules of Civil Procedure; General Order 47. And see, Yankwich, Impact of the Federal Rules of Civil Procedure on Bankruptcy, 1954, 42 Cal. L. Rev. 738, 743-744).

The Referee was correct in finding that the Order of Judge McCormick dated November 21, 1935, authorizing the then receiver to employ Newport at a salary of $250.00 per month until "the further order" of the Court terminated when the Trustee was elected and qualified on February 23, 1937. The Bankruptcy Act then in force had a provision identical with the present one which limits the power of the Court to appoint a receiver "until it (the petition) is dismissed or the trustee is qualified." (Bankruptcy Act, §2(3); 11 U. S. C. A., §11(3)). The receivership terminated upon the appointment of the Trustee. (In Re Olsen, 2 Cir., 1934, 70 F. 2d 253; Levin v. Barker, 8 Cir., 1941, 122 F. 2d 969, 973). And the Bankruptcy Act specificially provides that upon the appointment of the Trustee, he shall

> "(1) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estates as expeditiously as is compatible with the best interests of the parties in interest;" (Bankruptcy Act, §47(1); 11 U. S. C. A. §75(1)).

After the Trustee qualifies the only duties which the Receiver can perform are to file his accounts and turn the property over to the Trustee. And the Court cannot confer

upon the Receiver duties which only the Trustee can perform. (Stanton v. Busch, 9 Cir., 1932, 59 F. 2d 668, 669).

The Bankruptcy Act limits the compensation of receivers. (Bankruptcy Act, §48(1)(2); 11 U. S. C. A., §76(1)(2). There can be no recovery of fees unless the employment is authorized. (In Re Owl Drug Co., D. C. Nev., 1936, 16 F. Supp, 139, 147-149).

> "Estates should not be unnecessarily burdened with the expenses of a receivership after the appointment of a trustee in bankruptcy." (Levin v. Barker, *supra*, p. 973).

Receivers, or their attorneys, cannot be paid compensation unless appointed in compliance with the provisions of the Bankruptcy Act or General Orders 40, 42, 44 and 45. (In Re Eureka Upholstering Co., 2 Cir., 1931, 48 F. 2d 95; In Re Joslyn, 7 Cir., 1955, 224 F. 2d 223).

We consider the issues presented in the light of these principles. With the election of a trustee the Order of Judge McCormick came to an end, it became *functus officio*, as the phrase is. Newport's employment by the Trustee required a new Order. The persons connected with the estate, including Newport, shared this view. For on May 15, 1937, the Trustee petitioned the Referee *for authorization to employ* Newport. This was granted by Order dated May 17, 1937, which authorized the employment of Newport at a salary of $250.00 per month, the employment and salary to continue "so long as F. P. Newport shall be employed *by said Trustee* or until the further Order of this Court." (Emphasis added). This contemporaneous interpretation of the Order of Judge McCormick conforms to the view of the law stated in the decisions referred to. So there is no substance to the

argument that the Order of Judge McCormick continued in effect *despite the superseding* Order of the Trustee. Under the very wording of the Order, the employment could be terminated *either by the Trustee* or by the Referee. It was terminated by the Trustee as of December 1, 1943, by letter dated November 26, 1943. The letter clearly indicated that the cash position of the company prompted this action. Significantly the Trustee inserted this clause:

> "Should you care to bring this up for review, it will be quite all right with the writer whatever disposition the Court sees fit to make of it."

No petition to review was ever filed. A statement filed in the case shows that Newport was paid $5,597.53 during the receivership and $19,745.35 during the trusteeship. The latter amount Newport retained under an Order which he now claims the Referee had no right to make. When to this are added certain allowed expenses and commissions of sales we have a total of $25,466.62. The Referee was asked to make an additional allowance of $31,750.00 as unpaid salary from November 30, 1943, to May 3, 1954, at the rate of $250.00 per month.

The Referee was right in rejecting the claim. Regardless of the wording of the Order of Judge McCormick, the selection of a trustee following adjudication *automatically* terminated the powers of the receiver including the power to employ Newport. More, it would be inequitable to hold that because an Order provided that it "shall continue until the further Order of this Court" a person may *consent* to the substitution of another employment by a different officer of the Court, *accept* substantial fees under it, *acquiesce* in its termination, *stand* mute for eleven years and make no claim, and then, *after having unsuccessfully*

attempted to prevent liquidation of the estate by sale, claim accumulated back salary under an expired Order.

As the controlling stockholder of the bankrupt corporation, Newport was interested in preserving the assets of the estate and it was his duty to help do so. (Bankruptcy Act, §7, 11 U. S. C. A., §25). He kept the estate in bankruptcy for over nineteen years. Even at the last moment, as the previous opinion shows, he resisted liquidation. Granted that the delay may have turned what was a bankrupt estate nineteen years ago into a solvent estate, it was just as much to the interest of his corporation to preserve its good name by realizing the greatest value for its assets as it was that of the creditors to be paid their claims in full. Indeed, throughout the proceedings, Judges and Referees seemed to have listened to the plea that eventually the problems which led to bankruptcy would be solved if time enough was given. They were, therefore, very lenient. A liquidation by sale was ordered only when it became apparent that without it there could be no foreseeable termination of the bankruptcy. Nor do we see any justification in the record for the allowance of some $208,850.00 or any part of it for alleged extraordinary services and expenses. No written Order was ever asked for or made agreeing to compensate Newport for any extraordinary services during the contractual period with the trustee and receiver or thereafter. The Referee was right in rejecting any offer to prove an oral understanding with the Receiver and Trustee, *now dead*, that compensation was to be paid over and above the minimum allowed. Agreements of this character, whether relating to the services of attorneys or others, are not binding on the Court, are contrary to public policy and to the policy of the Bankruptcy Act. (See, General Orders 40, 42 and 44; Albers v. Dickinson, 8 Cir., 1942, 127 F. 2d 957, 961; (cited with

approval by the Court of Appeals for the Ninth Circuit in Beecher v. Leavenworth State Bank, 9 Cir., 1950, 184 F. 2d 498, 501; Weil v. Neary, 1929, 278 U. S. 160, 172-174; Crutcher v. Logan, 5 Cir., 1939, 102 F 2d 612; Cox v. Elliott, 8 Cir., 1941, 122 F. 2d 851).

In interpreting the Bankruptcy Act, courts have rejected repeatedly the contention that, in the *absence of specific* prohibitions in the Bankruptcy Act, the bankruptcy court, in the exercise of equitable powers, *may* allow compensation in extraordinary cases. Illustrative of this attitude are the following quotations from cases decided *under the prior* and *present* Bankruptcy Acts:

> "The Bankruptcy Act carefully regulates the compensation and expenses which may be allowed in bankruptcy. * * * *The general policy of the act denies compensation unless expressly provided.*" (In Re Realty Associates Securities Corporation, 2 Cir., 1934, 69 F. 2d 41, 42) (Emphasis added).

> "The present Bankruptcy Act *plainly endeavors to restrict allowances* from the bankrupt estate. In Re Realty Associates Securities Corporation (C. C. A.) 69 F. (2d) 40; In re Kinnans Co.'s Estate (C. C. A.) 242 F. 769." (In Re First Bond & Mortgage Co., 5 Cir., 1935, 74 F. 2d 930, 932) (Emphasis added).

> "But passing this weakness in the appellant's case, he encounters the rule which this court has frequently enforced that no compensation can be allowed for 'administrative' services unless *the person performing them obtained authority from the court in limine.*" (In re Postal Telegraph & Cable Corp., 2 Cir., 1941, 119 F. 2d 861, 863).

> "Were it the law that creditors who voluntarily perform acts which prove to be beneficial to the estate should or must be allowed compensation, courts of

bankruptcy would be confronted in many instances with numerous claims for compensation for 'voluntary' assistance. In re Owl Drug Co., D. C. Nev., 1936, 16 F. Supp. 148." (Cox v. Elliott, *supra*, p. 852).

Behind the rule is the desire to discourage *duplication* of services:

"For administrative reasons Congress has wisely provided that the trustee shall have sole responsibility for administering the estate." (In Re Joslyn, 7 Cir., 1955, 224 F. 2d 223, 225).

"* * * Another expression of the same principle is the familiar rule that an officer is expected to perform his duties personally and not through the agency of another person who in turn would look to the estate for compensation. No duplication of expenses through trespassing on another's assigned field of duties, and equally none through voluntary delegation of powers or duties." (Collier on Bankruptcy, 14th Ed., 1954, Vol. 3, pp. 1426-1427).

And see the writer's opinions In Re Owl Drug Co., *supra*, pp. 147-149, and In Re Alta Vineyards Co., D. C. Cal., 1949, 87 F. Supp. 608; Gochenour v. Cleveland Terminals Bldg. Co., 6 Cir., 1944, 142 F. 2d 991, 994-995; Beecher v. Leavenworth State Bank, 9 Cir., 1950, 184 F. 2d 498, 501; In Re Joslyn, *supra*, p. 225.

In the circumstances, both on legal and equitable principles, the Referee was right in denying additional compensation and in dismissing the claim with prejudice. His Order is affirmed.

Dated this 23rd day of December, 1955.

LEON R. YANKWICH,
United States District Judge.

United States District Court, Southern District of California, Central Division. Honorable Leon R. Yankwich, Judge.

Decision on Review.

Filed Dec. 23, 1955.

In the Matter of F. P. Newport Corporation, Ltd., a corporation, Petitioner. No. 25,308-Bkcy.

The petition of F. P. Newport Corporation, Ltd. and F. P. Newport to review the Order of the Referee dated November 15, 1955, denying the claim of F. P. Newport for fees alleged to be due under contract of employment and for extraordinary fees, heretofore heard, argued and submitted, is now decided as follows:

Upon the grounds set forth in the memorandum opinion this day filed, the Order of the Referee dated November 15, 1955, denying F. P. Newport fees under claimed agreement and for extraordinary services is hereby affirmed. The Court adopts the findings of the Referee, except insofar as they relate to timeliness of review. Formal Order to follow.

Dated: this 23rd day of December, 1955.

LEON R. YANKWICH,
Judge.

In the District Court of the United States, Southern District of California, Central Division.

Order Affirming Order of Referee Dismissing With Prejudice Petition of F. P. Newport for Allowance of Compensation for Alleged Services.

Filed Dec. 27, 1955.

In the Matter of F. P. Newport Corporation, Ltd., a corporation, Bankrupt. In Bankruptcy No. 25308-Y.

Honorable Reuben G. Hunt, Referee in Bankruptcy, having heretofore on November 15, 1955, signed and filed his Findings of Fact, Conclusions of Law and Order, dismissing with prejudice the petition of F. P. Newport for compensation for services alleged to have been performed by him for the benefit of the estate of the above named bankrupt; and said F. P. Newport, and Morris Lavine, Esq. attorney for F. P. Newport Corporation Ltd., and for F. P. Newport, having filed, within the time allowed by law, their petitions to the above entitled Court for review of said Findings of Fact, Conclusions of Law and Order; said review came on regularly to be heard on December 19, 1955, at 10 o'clock A.M. before the Honorable Leon R. Yankwich, Chief Judge of said Court, pursuant to notice of the time and place of said hearing duly and regularly given as provided by law.

The Trustee herein, Paul W. Sampsell, appeared by his counsel Messrs. Bailie, Turner, Lake & Sprague by Norman A. Bailie, Esq., Bank of America National Trust and Savings Association, an unsecured creditor, appeared by its counsel Edmund Nelson, Esq. and Winfield Jones, Esq., and F. P. Newport, and Morris Lavine, Esq. attorney for F. P. Newport Corporation, Ltd. and F. P. Newport appeared by Morris Lavine, Esq. The Court, being

familiar with the record on review and other records of this proceeding, and having heard the arguments of counsel and being fully advised in the premises, makes and files his Order on said review as follows:

IT IS HEREBY ORDERED:

1. That the Findings heretofore made herein by the Referee are hereby adopted as the Findings of the Court.

2. That the Order of the Referee made and filed herein on November 15, 1955, dismissing with prejudice the petition of F. P. Newport for fees for alleged services to the bankrupt estate be and it is hereby confirmed.

Dated the 27th day of December, 1955.

LEON R. YANKWICH,
Chief Judge, United States District Court.